Union of Beverage Industry Workers, Federation of Malaya & Anor v Syed Shahir bin Syed Mohamud (sued as President of MTUC) & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R1–24–03 OF 2005, R1–24–04 OF 2005 AND R1–24–10 OF 2005
RAUS SHARIF J
5 MAY 2005

Unincorporated Associations — Societies — Office bearers — Appointment of principal officers — Whether court had jurisdiction to make declare election void — Whether Registrar of Societies conferred full powers to deal with matters concerning administration of societies — Societies Act1966 s 16

Unincorporated Associations — Societies — Office bearers — Appointment of principal officers — Plaintiffs were nominated to contest at elections — Whether plaintiffs had locus standi to dispute election results — Irregular election due to presence and voting by parties with no locus standi to vote

The plaintiffs sought for declarations that the appointment of the principal officers of the Malaysian Trade Union Congress ('MTUC') for 2005–2007 term as announced in the Triennial Delegates Conference ('TDC') on 30December 2004 as null and void. The reasons being that the defendants had allowed 27 delegates purported to represent the National Union of Bank Employee ('NUBE') to be present and to vote at the TDC. According to the plaintiffs, these 27 delegates of NUBE have no *locus standi* to represent the NUBE. Hence, the plaintiffs are seeking for a fresh election to be held without the presence of the 27 delegate representing the NUBE. The defendants had raised preliminary objections, among others, that: (i) there was an absence of jurisdiction for this court to make the orders sought by the plaintiffs; and (ii)the proper parties were not before the court.

Held, dismissing the originating summons with costs:

(1) Section 16 of the Societies Act 1966 ('the Act') did not oust the jurisdiction of the court. There was nothing in s 16 which states that the Registrar of Societies shall determine the dispute or adjudicate upon it. It only provided that if the Registrar of Societies was of the opinion that a dispute has occurred among members of office bearer, the Registrar of Societies may serve notice on the society requiring evidence of settlement of the dispute or institution of the proceedings for settlement of such dispute. According to s 16(2) if such notice was not complied with, the Registrar of Societies within one month or any extension thereof may cancel the registration of the society. The court has the jurisdiction to grant the prayers as sought by the plaintiffs (see para 9); *Yoong Jih Ping & Anor v Gunapati s/o Suppiah & Ors* [1995] MLJU 476 and *PV Das v Pendaftar Pertubuhan Malaysia* [1993] 3 MLJ 741 followed.

(2) The plaintiffs were delegates to TDC pursuant to r 6(3) of MTUC's constitution. They were nominated by their respective union to contest for the position in the election. They lost the contest. Surely, they must have the necessary *locus standi* to dispute the result of the election and to bring this action against MTUC (see para 10).

[**Bahasa Malaysia summary**

Plaintif-plaintif menuntut untuk satu deklarasi bahawa pelantikan pegawai-pegawai utama untuk Malaysian Trade Union Congress ('MTUC') bagi terma 2005–2007 seperti yang diumumkan di Conference Triennial Delegates ('TDC') pada 30 Disember 2004 sebagai terbatal dan tidak sah. Alasan-asalannya adalah bahawa defendan-defendan telah membenarkan 27 peserta yang dikatakan mewakili National Union of Bank Employee ('NUBE') untuk menghadiri dan mengundi di TDC. Menurut plaintif-plaintif, kesemua 27 peserta NUBE ini tiada *locus standi* unutk mewakili NUBE. Oleh itu, plaintif-plaintif memohon supaya satu pelantikan yang baru diadakan tanpa kehadiran 27 deligasi yang mewakili NUBE. Defendan-defandan membangkitkan bantahan awal, antara lain bahawa: (i) ketiadaan bidang kuasa bagi mahkamah ini untuk membuat perintah-peritah seperti yang dipohon oleh plaintif-plaintif; dan (ii) pihak-pihak yang sepatutnya tiada di hadapan mahkamah.

Diputuskan, menolak saman pemula dengan kos:

(1) Seksyen 16 Akta Pertubuhan 1966 ('Akta tersebut') tidak menyingkirkan bidang kuasa mahkamah. Tiada apa-apa dalam s 16 yang menyatakan bahawa Pendaftar Persatuan patut menentukan pertikaian ataupun memberi penghukuman terhadapnya. Ia hanya menyatakan bahawa sekiranya Pendaftar Persatuan berpendapat bahawa pertikaian telah berlaku dikalangan ahli-ahli pemegang jawatan, Pendaftar Persatuan tersebut boleh menyerahkan notis ke atas persatuan meminta bukti penyelesaian pertikaian atau permulaan tindakan bagi penyelesaian pertikaian tersebut. Menurut s 16(2) sekiranya notis tersebut tidak dipatuhi, Pendaftar Persatuan dalam masa satu bulan atau sebarang tempoh lanjutan kemudiannya boleh membatalkan pendaftaran syarikat itu. Mahkamah mempunyai bidang kuasa untuk membenarkan permohonan seperti yang dipohon oleh plantif-plaintif (lihat perenggan 9); *Yoong Jih Ping & Anor v Gunapati s/o Suppiah & Ors* [1995] MLJU 476 and *PV Das v Pendaftar Pertubuhan Malaysia* [1993] 3 MLJ 741 diikut.

(2) Plaintif-plaintif adalah ahli dalam TDC menurut kaedah 6(3) Perlembagaan MTUC. Mereka dicalonkan oleh kesatuan masing-masing untuk bertanding bagi jawatan tersebut semasa mengundi. Mereka kalah dalam pertandingan tersebut. Pastinya, mereka mempunyai *locus standi* yang diperlukan untuk mempertikaikan keputusan undian dan memulakan tindakan terhadap MTUC (lihat perenggan 10).]

Notes

For cases on office bearers, see 12 *Mallal's* Digest (4th Ed, 2003 Reissue) paras 2429–2430.

Cases referred to

Cheah Swee Jin v Yeoh Guan Heah [1989] 2 MLJ 56 (refd)
Metal Industry Employees Union v Register of Trade Unions & Ors [1976] 1 MLJ 220 (refd)
PV Das v Pendaftar Pertubuhan Malaysia [1993] 3 MLJ 741 (folld)
RSA Sdn Bhd v Pekerja-Pekerja RCA & IR [1991] 1 MLJ 309 (refd)
SI Rajah & Anor v Dato' Mah Hon Kam & Ors [1993] 3 MLJ 741 (refd)
Yoong Jih Ping & Anor v Gunapati s/o Suppiah & Ors [1995] MLJU 476 (folld)

Legislation referred to

Societies Act 1966 ss 2, 9(c), 13(1)(iv), 13A, 14, 16 and 18

D Kalaimany (Zainur Zakaria with him) (Kalai & Partners) for the plaintiffs.
B Lobo (Lobo & Associates) for the defendants.

Raus Sharif J:

[1] There are three originating summons before this court:

(i) Originating Summons No R1–24–03 of 2005;

(ii) Originating Summons No R1–24–04 of 2005; and

(iii) Originating Summons No R1–24–10 of 2005;

[2] Basically, the plaintiffs in the three originating summons are seeking for declarations that the appointment of the principal officers of the Malaysian Trade Union Congress ('MTUC') for 2005–2007 term as announced in the Triennial Delegates Conference ('TDC') on 30 December 2004 as null and void. The reasons being that the defendants had allowed 27 delegates purported to represent the National Union of Bank Employee ('NUBE') to be present and to vote at the TDC. According to the plaintiffs, these 27 delegates of NUBE have no *locus standi* to represent the NUBE. Hence, the plaintiffs are seeking for a fresh election to be held without the presence of the 27 delegate representing the NUBE.

[3] The defendants had in all the three originating summons, filed summon in chambers, raising preliminary objections, complaining:

(i) There is an absence of jurisdiction for this court to make the orders sought by the plaintiffs;

(ii) (a) In the alternative these action not being a representative action is misconceived in law;

(b) That the proper parties are not before the court; and

(iii) In the alternative that the prayer as frame in these actions cannot be granted since the prayers do not seeks consequential relief.

[4] It was the submission of the defendants that if the court is with them in any of the above mentioned grounds, then the court should dismissed the action as conspicuously unmaintainable and order costs to be borne personally by the solicitors for the plaintiff.

FINDINGS

(i) Absence of jurisdiction

[5] It is the submission of the defendants that there is an absence of jurisdiction for this court to the make orders sought by the plaintiffs. According to the defendants by virtue of ss 13(1)(iv), 13A, 14, 16 and 18 of the Societies Act 1966 ('the Act') the appropriate bodies or persons to decide on the matters raised by the plaintiffs is the Registrar of Societies and the Minister. In essence the defendants contended that since the Act provides a statutory machinery to deal with the matters as raised by the plaintiffs, the plaintiffs must exhaust the remedies as under the Act before coming to this court. In support for the said proposition the defendants relied on the cases of *RSA Sdn Bhd v Pekerja-Pekerja RCA & IR* [1991] 1 MLJ 309 and *Metal Industry Employees Union v Register of Trade Unions & Ors* [1976] 1 MLJ 220. The defendants also relied on the case *SI Rajah & Anor v Dato' Mah Hon Kam & Ors* [1993] 3 MLJ 741 where Lim Beng Choon J held that the court by virtue of s 16 of the Act has no jurisdiction to grant declarations regarding the proper appointment of the lawful office bearers of a society. According to Lim Beng Choon J the proper forum to deal with the issues in that case was the Registrar of Societies.

[6] The plaintiffs in response, contended otherwise. According to the plaintiffs the sections of the Act referred to by the defendants has no relevance to the contention that there is an absence of jurisdiction of this court. The defendants further pointed out the case of *SI Rajah* was not the only case that had decided on s 16 of the Act but had also been considered in two other case namely *Yoong Jih Ping & Anor v Gunapati s/o Suppiah & Ors* [1995] MLJU 476 and *PV Das v Pendaftar Pertubuhan Malaysia* [1993] 3 MLJ 741. In both cases, as submitted by the plaintiffs, the courts held that s 16 cannot oust the jurisdiction of the court.

[7] After reading the authorities, I am more inclined to agree with the decisions in *Yoong Jih Ping* and *PV Das* rather than the decision in *SI Rajah*. In *Yoong Jih Ping*, Ghazali bin Mohd Yusoff JC (as he then was) in dealing with s 16 of the Act stated as follows:

> Looking at the ingredients of s 16 as stated above, I cannot see how the contention that the section is mandatory section and oust the jurisdiction of the court, can hold water. The section does not even provide that the register shall determine the

dispute or adjudicate upon it. The section merely provides that if the register is of the opinion that a dispute has occurred as a result of which he is not satisfied of the identify of the persons who have been properly constituted as office-bearers, he may serve such notice upon the society. Upon receiving the notice, the society has to comply with it and if proceedings have been instituted, the society has to inform the Registrar. I am of the view that the 'proceedings' here would mean proceedings in court.

[8] Mohd Nor Abdullah J, speaking on the same subject in *PV Das* said as follows:

> Upon a toothcomb scrutiny of s 16 I am of the view that the registrar has no power to conduct on enquiry into the dispute. His power is to direct the society to settle the dispute. The dispute may be settled by the society and the register be furnished with evidence of the settlement or the disputes may be settle by the court by instituting legal proceedings in the court and the registrar be furnished with evidence of the institution of the proceedings.

[9] I am of the same view. Quite clearly that s 16 does not oust the jurisdiction of the court. Infact there is nothing in s 16 which states that the Registrar shall determine the dispute or adjucate upon it. It only provides that if the registrar is of the opinion that a dispute has occurred among members of office bearer, the registrar may serve notice on the society requiring evidence of settlement of the dispute or institution of the proceedings for settlement of such dispute. According to s 16(2) if such notice is not complied with, the registrar within one month or any extension thereof may cancel the registration of the society. Thus, to me, this court has the jurisdiction to grant the prayers as sought by the plaintiffs.

(ii) Locus standi

[10] The second preliminary objection raised by the defendants is related to *locus standi* of the plaintiffs. According to the defendants the second plaintiff in the respective originating summons has no *locus standi* to institute the action. With due respect I am unable to agree. Clearly the second plaintiff in the respective three originating summons were delegates to TDC pursuant to r6(3) of MTUC's constitution. They were nominated by their respective union to contest for the position in the election. They lost the contest. Surely they must have the necessary locus standi to dispute the result of the election and to bring this action against MTUC.

(iii) Whether the appropriate defendants had been named

[11] The defendants contended that the action should have been instituted against the second and third defendants and En Zainal @ Jantan bin Rampak, who were the office bearer of MTUC until the election result was announced or the members of General Purpose Committee of MTUC. Again and with respect I am unable to agree. The position of the law is very clear. Section 9(c)

of the Act clearly provides that a society may be sued in the name of the public officer who has been registered as such by the registrar and if no such person is available the society could be sued in the name of office bearers of the society. Section 2 of the Act defines office bearers to mean the 'President … Secretary … Treasurer of such Society'. The first, second and third defendants are the current President, Secretary and Financial Secretary of MTUC respectively. En Zainal Rampak did not hold the position as President of MTUC when the suit was filed. Surely, he cannot be named as a defendant in this case. In *Cheah Swee Jin v Yeoh Guan Heah* [1989] 2 MLJ 56, a similar argument was raised and the Court held that by virtue of s 9(c), a society may sue or be sued through the office bearers and the words office bearers as defined by s 2 of the Act must necessarily mean the incumbent, or the present office bearers.

(iv) No consequential relief

[12] It is submitted by the defendants that the originatin summons does not claim a consequential relief and accordingly defective. To me, the reliefs sought by the plaintiffs in the originating summons are quite clear and as I have stated earlier, this court has the jurisdiction to grant the said relief.

(v) Representative action

[13] The defendants also submitted that these actions are defective since they were filed not by way of representative action. According to the defendants, by not being a representative action will mean the decision of the court will only be binding on the parties herein and in particular the plaintiffs in these action. With respect, I see no merit on the argument. In the event, the plaintiffs in the three cases are successful, the net effect would be that the court's decision will be binding on MTUC.

[14] For the above reasons, the defendants' summons in chambers in the three originating summons is dismissed with costs.

Originating summons dismissed with costs.

Reported by Peter Ling